



# INDUSTRY CIRCULAR

DEPARTMENT OF  
THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Washington, D.C. 20226

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## LABELING AND ADVERTISING MALT BEVERAGES

Brewers, Importers, Wholesale  
Malt Liquor Dealers and  
Others Concerned:

Purpose. This circular is to inform industry members that ATF Rul. 76-1, which deals with the caloric representations made in the labeling and advertising of malt beverages, was published in the Alcohol, Tobacco and Firearms Bulletin for January 1976. The ruling reads as follows:

The Bureau of Alcohol, Tobacco and Firearms has been asked to comment on its present position on caloric and carbohydrate references in malt beverage labeling and advertising.

Section 5(e) and 5(f) of the Federal Alcohol Administration Act, implemented by regulations in 27 CFR 7.29 and 7.54, relate to prohibited statements and practices in the labeling and advertising of malt beverages. In general, the FAA Act and regulations prohibit the use of certain statements in advertisements in interstate commerce, or advertisements that are calculated to induce sales in interstate commerce, and the use of any such statements on labels of malt beverages introduced into interstate commerce, if the laws of the state into which the malt beverages are to be shipped impose similar requirements. Prohibited statements include those that are untrue in any particular; that, irrespective of falsity, tend to create a misleading impression; that are disparaging of a competitor's product; or that imply that the use of any malt beverage has curative or therapeutic effects.

In 1955, the Alcohol and Tobacco Tax Division of the Internal Revenue Service (a predecessor agency administering the FAA Act) completed a consumer survey to determine whether misleading implications were made through malt beverage advertising. It found that a substantial percentage of the consumers contacted received the impression that so-called "Low Calorie" beers

were either entirely non-fattening or at least negligible in calorie content; that they were less fattening than other competitive beers; that the consumer could lose weight by drinking them; that these products were approximately equal in food value to the food items with which their calorie content was compared; or that the advertised product could be substituted for such food items with the same nutritional results. In view of this, the industry was advised in Industry Circular 55-7 and in Revenue Ruling 55-404, C.B. 1955-1, 615 (Internal Revenue), of the misleading aspects of low calorie themes and was requested to promptly desist from the use of any further references to the calorie content of their products and to more specific implications, however made, that their products were non-fattening or virtually so.

During the 1960's, the Alcohol and Tobacco Tax Division held extensive conferences with the Food and Drug Administration concerning the labeling of various so-called "Low Calorie - Low Carbohydrate" beers being introduced into the commercial market. By mutual agreement, statements of average analysis on labels for these beers were permitted, provided no further carbohydrate claim was made. However, a truthful caloric comparison between a low calorie product and that of an equal volume of the brewer's regular beer was permitted to be shown as for example: "96 calories - 1/3 fewer calories than our regular beer."

While this position is generally being adhered to, we have recently had to correct advertising that far exceeded allowable claims. Because of this and numerous industry inquiries we feel it necessary to issue a formal ruling.

Held, caloric and carbohydrate representations made in labeling and advertising of malt beverages without qualification are considered to be misleading and contrary to the provisions of 27 CFR 7.29(e) and 7.54(e), since they create the impression that the product has value as a dietary aid.

The Bureau will not sanction any labeling or advertising references which indicate or imply the presence of calories or carbohydrates in malt beverage products, unless such references are a part of, or are made in conjunction with, a truthful statement of average analysis.

For example:

12 oz size - average analyses

Calories-----96  
Carbohydrates-----2.8 grams  
Protein-----0.9 grams\*  
Fat-----0.0 grams\*

\* Same as our regular beer

However, the Bureau will permit a truthful statement of caloric comparison between the low-calorie product and an equal volume of the brewer's regular beer, such as "96 calories - approximately 1/3 fewer calories than our regular beer." Where such a statement of caloric comparison appears in advertising material other than in the statement of average analysis, the bottle contents, e.g., "per 12 oz bottle (serving)" must be included as a part of such statement, in equally conspicuous lettering or audio presentation.

A reasonable time will be allowed for the revision of labels or the preparation of substitute advertising copy to conform to the requirements of this ruling. However, the transition should be effected as expeditiously as possible.

Rev. Rul. 55-404, C.B. 1955-1, 615 (Internal Revenue), is superseded.

Inquiries. Inquiries concerning this circular should refer to its number and be addressed to the Assistant Director, Regulatory Enforcement, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW., Washington, D.C. 20226.

  
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Director